

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

HAROLD HOLLOWAY,  
RESPONDENT.

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:  
:  
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FINAL DECISION  
AND ORDER

The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated this 22<sup>nd</sup> day of November, 1989.

Linda L. Schlavensky

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	PROPOSED DECISION
HAROLD HOLLOWAY,	:	
RESPONDENT.	:	

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The parties to this proceeding for purposes of Wis. Stats. sec. 227.53 are:

Harold Holloway  
3632 Highway 151  
Sun Prairie, WI 53590

Real Estate Board  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708

Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708

A hearing was held in the above-captioned matter on September 28, 1989. Attorney Pamela M. Stach appeared for the complainant, Department of Regulation and Licensing. There was no appearance entered by any person on behalf of the respondent, Harold Holloway.

On Respondent Holloway's failure to file an answer to the Notice of Hearing and Complaint in this matter, and upon his failure to appear at the hearing, Attorney Stach moved for a finding of default pursuant to RL 2.14, Wisconsin Administrative Code. The hearing examiner granted that motion. Accordingly, the facts alleged in the complaint are deemed admitted by the respondent.

Based on the entire record in this case, the hearing examiner recommends that the Real Estate Board adopt the following Proposed Decision consisting of Findings of Fact, Conclusions of Law, Order, and Opinion as its Final Decision.

### FINDINGS OF FACT

1. Harold Holloway, last known address 3632 Highway 151, Sun Prairie Wisconsin, is duly licensed to practice real estate in the State of Wisconsin under license number 36826-6 granted on February 12, 1986.

2. On March 22, 1987, Alf and Olive Sherman made an offer to purchase property located at 3642 Dennet Drive, Madison, Wisconsin. The offer was made at a selling price of \$46,000.00 and subject to the sale of the Sherman's home.

3. On March 24, 1987, the sellers, Russell and Alice Hanson, counteroffered with a price of \$47,000.00 and removed the contingency regarding the sale of the Shermans' home.

4. On March 25, 1987, the counteroffer was countered with the price set at \$46,500.00 by the Shermans. The Shermans also included wording in the counter to the counteroffer as follows: 'This offer to be a cash offer not subject to financing.'

5. On March 27, 1987, the Hansons accepted the counter to their counteroffer. The document reflecting the counter to the counteroffer now states "this offer to be a cash offer not subject to financing, not subject to sale of other property."

6. The wording "not subject to sale of other property" appearing on the last counteroffer is in the handwriting of Respondent and was added after the Shermans signed the document.

7. Respondent did not have authorization from the Shermans to add the additional wording "not subject to sale of other property" as a contingency.

8. The sellers would not have accepted the offer if it was contingent on the sale of the buyer's property.

9. The buyers would not have offered to purchase the property without the sale of their current home as a contingency.

10. As a result of the Respondent adding language to the last counteroffer, the Shermans lost their earnest money deposit of \$1,000.00 to the Hansons as liquidated damages for failure to complete the transaction reflected on the last counteroffer.

### CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to Wis. Stats. sec. 452.14(3).

2. Respondent's actions as set forth in the Findings of Fact constitute improper and dishonest dealing and a substantial misrepresentation with reference to a transaction which was injurious to the purchaser of the property and therefore constitutes unprofessional conduct within the meaning of Wis. Stat. sec. 452.14(3)(b) and (k).

### ORDER

Now, Therefore, it is ORDERED that the license previously granted to Respondent Harold Holloway to engage in the practice of real estate be, and hereby is, REVOKED.

### OPINION

It is the duty of a person licensed to practice real estate in the state of Wisconsin to do so in a way which provides fair treatment to all parties to each transaction with which the licensed person is involved. Harold Holloway clearly failed in that duty to both the Shermans and the Hansons in this transaction. The sellers were deprived of the benefits for which they engaged respondent, namely, a closed sale to capable purchasers, and the purchasers were deprived of the opportunity to bargain in good faith. While the facts disclose that this transaction between the Shermans and the Hansons probably would not have closed in any event, the harm is significant and indisputable. The purchasers have effectively been swindled out of their earnest money because of the dishonesty of the sellers' agent.

The only appropriate response is to revoke respondent's license so that he may not renew the license registration at some later date. In my opinion, nothing short of revocation will adequately demonstrate the seriousness of this type of offense, since the offense strikes at the very core of the duty of a real estate licensee to his principals and the other parties to a real estate transaction.

Dated this 3rd day of November, 1989.

  
James E. Polewski, Examiner

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with State of Wisconsin Real Estate Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon State of Wisconsin Real Estate Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: State of Wisconsin Real Estate Board.

The date of mailing of this decision is November 29, 1989.

WLD:dms  
886-490

**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.52 Judicial review; decisions reviewable.** Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employee trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.